

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING -- February 9, 1972

Appeal No. 11049 Golden Commissary Corporation, appellant

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee

On motion duly made, seconded and carried in the absence of Mr. Mackey, the following Order of the Board was entered at the meeting of May 16, 1972.

EFFECTIVE DATE OF ORDER - May 17, 1972

ORDERED:

That the appeal for a variance from the provisions of Section 7204 and 7206 to permit parking spaces less than 9' x 19' and driveway less than 14' in width or attendant parking or for permission to provide parking on another lot other than that upon which the building is located as provided in Section 7205.3 said parking to be located at 3030 M Street, N. W., lot 856, Square 1197, be granted in part.

FINDINGS OF FACT:

1. The subject property is located in a C-2-A District.
2. The property is presently used as storage with three theatres and parking also in the building.
3. The appellant proposes to use the property as a restaurant with three theatres and parking also in the building.
4. Evidence was presented by the appellant at the public hearing that the existing structure is an old building re-modeled by the owners of the property pursuant to plans submitted to and approved by D. C. building authorities.
5. The plans, as submitted, provided for the off-street parking for the theatres and restaurant.
6. Appellant stated the cost of remodeling and renovation attributed to the portion to be used as the restaurant was in the neighborhood of \$200,000.

7. Appellant stated that should the variance not be granted, a very substantial hardship would be created upon them.

8. Appellant stated that in addition to the on-site parking, approximately 125 spaces are provided for the patrons of the restaurant within a few hundred feet.

9. The proposed restaurant is in the cellar of the building below the first floor joists and will seat a maximum of 325 persons.

10. The appellant and the opposition requested that the facts in Appeal No. 10979 decided by the Board on November 23, 1971 be incorporated as a reference in the existing appeal.

11. There was considerable opposition to the granting of this appeal registered at the public hearing.

12. The major objector to the appeal was the Georgetown Citizens Association. Their objection was that it was physically impossible to provide 67 parking spaces of the legal size specified in Section 7204.1 of the Zoning Regulations.

13. The objectors also stated that the additional parking spaces would create traffic tie-ups to an area that was already over-populated with traffic congestion.

14. The Georgetown Citizens Association alleged the only hardship shown by the owner was that failure to grant the variance would deprive him of a more intense use of his property.

15. The appellant stated that they spent large sums of money relying upon the plans that were approved by the D. C. building authorities and that this appeal comes under Section 8207 of the Zoning Regulations concerning hardship which deals directly with the subject property that contains certain impediments which has been connected with the property for more than fifty years.

OPINION:

The Board, in arriving at its decision, considered the strict interpretation of the D. C. Court of Appeals Case No. 5884 entitled Gardner E. Palmer, et al., v. the Board of Zoning Adjustment and as a result feels that the requested variance may be granted under the less strict rules of proof required by the Court in area variance cases. Further, the Board is of the opinion that the granting of this variance will not create any dangerous or otherwise objectionable traffic conditions.

After considering all of the allegations of both the opposition and appellant, the Board feels that the appellant should be granted a variance from the provisions of Sections 7204 and 7206 to permit parking spaces less than 9' x 19' and a driveway less than 14' in width.

This Order shall be subject to the following condition:

- a. Appellant must provide attendant parking.

We are of the opinion that the appellant has proved a hardship within the meaning of the variance clause of the Zoning Regulations and that a denial of the requested relief will result in peculiar and exceptional practical difficulties and undue hardship upon the owner.

Further, we hold that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Board is cognizant that its rules of procedure at the time of the hearing on this matter did not specifically provide for cross-examination but that there was no specific request for an

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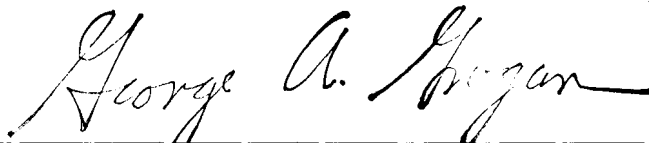
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opportunity to cross-examine made or denied. If any person participating in this proceeding believes that he has been prejudiced by the lack of an opportunity to cross-examine, the Board is disposed to entertain a motion to reopen this case to permit cross-examination. Such a motion should be made within fifteen (15) days from the date of this final decision. The motion should identify the witnesses to be cross-examined, as well as that portion of his testimony to be subjected to cross-examination. Specific reference to the transcript of proceedings will be helpful. Copies of the transcript are available for inspection by the public in the Offices of the Zoning Commission, District Building, Room 11A, 14th & E Streets, N. W., between 8:15 a.m. and 4:45 p.m. The motion should be forwarded to the Board in care of this address.

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED:

By: \_\_\_\_\_



GEORGE A. GROGAN

Secretary of the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.